IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.1007 OF 2005

1. Shri Madhukar Tanhu Kate,
   50, Occ: Agriculturist

2. Shri Bindas Madhukar Kate,
   Age-Adult, Occ: Agriculturist

3. Shri Rajaram Madhukar Kate,
   Age-Adult, Occ: Agriculturist

4. Sou. Shanta Somnath Shelar,
   Age-Adult, Occ: Household

5. Sou. Sunita Suresh Phuge,
   Age-Adult, Occ: Household

All residing at Dapodi,
Pune-411 012.
All the Petitioners through their
Power of Attorney holder

Shri Chandrakant Dattatraya
Borkar, Age-Adult,
Occ: Business, residing at
862, Sadashiv Peth,
Pune-411 030. .... Petitioners

- Versus -

1. The State of Maharashtra

2. Pune Municipal Corporation
   through the Commissioner,
   Pune Municipal Corporation,
   Shivajinagar, Pune-411 005.

3. Pimpri-Chinchwad Municipal
   Corporation, through the
   Commissioner, Pimpri-
   Chinchwad Municipal Corpo-
   ration, Pimpri, Pune-411 018.

4. The Chairman,
   Planning Committee,
   Pimpri-Chinchwad Municipal
   Corporation, Pimpri,
   Pune-411 018.

5. Director, Town Planning,

Pimpri-Chinchwad Municipal
Corporation, Pimpri,
Pune-411 018. .... Respondents

Shri V.G. Peshave, Advocate, for the Petitioners.

Ms M.P. Thakur, Asst. Government Pleader, for the Respondent No.1.

Savarsri Ram Pethe i/b R.G. Ketkar, Advocates, for the Respondent No.2.

Shri N.V. Walawalkar, Advocate, for the Respondent No.3,

None for the Respondent Nos.4 and 5, though served.

CORAM: R.M.S. KHANDEPARKAR &
NARESH H. PATIL, JJ.

DATED: AUGUST 16, 2006

ORAL ORDER (Per R.M.S. Khandeparkar, J.):

1. Heard. In this petition, the petitioners are seeking direction to the respondents to treat the petitioners' land as having been released from the reservation in the development plan consequent to failure on the part of the respondents to comply with the notice dated 11-9-1996 stated to have been issued in terms of Section 127 of the Maharashtra Regional and Town Planning Act, 1966, hereinafter called as "the said Act". The contention of the respondents is that no such notice was issued to the Planning Authority and therefore, there was no notice issued, as was required to be issued in terms of Section 127 for the purpose of

acquisition of the land in question or to have the same to have been deemed to have been released from the reservation under the said provision of law.

2. The learned Advocate appearing for the petitioners, while placing reliance in the decision of the Division Bench in **Madhav Raghunath Thatte & others v. Director, Directorate of Town Planning, Maharashtra State & others,** reported in 1999 (1) Bom.C.R. 543 submitted that though the notice dated 11-9-1996 was addressed to the Town Planning Authority and not to the Pune Municipal Corporation who was the Planning Authority at the relevant time, in fact, the copy thereof was also sent to the Pune Municipal Corporation and there is a clear admission to that effect in the letter of the Pune Municipal Corporation dated 12-1-2000 addressed to the Government. The learned Advocates appearing for the respondents, on the other hand, submitted that Section 127 clearly requires the notice to be addressed and served upon the Planning Authority. In the case in hand, no such notice was served upon the Planning Authority. By "Planning Authority" they mean the Pune Municipal Corporation.

3. There is no dispute that the records placed before the Court do not disclose that the letter dated 11-9-1996 was addressed to the Planning Authority i.e.,

the Pune Municipal Corporation, who was the Planning Authority at the relevant time in relation to the plot in question. It is also undisputed fact that the said notice dated 11-9-1996 nowhere discloses on the face of it having been sent to the Planning Authority i.e., the Pune Municipal Corporation. The records also do not disclose that the copy thereof was served upon the Planning Authority i.e., the Pune Municipal Corporation by the petitioners.

4. Undoubtedly, the letter dated 12-1-2000 refers to the fact of knowledge about such notice to the Pune Municipal Corporation. It also refers to have received a copy of the said notice. However, the said statement is qualified by the statement that the fact about the service of notice was informed to the Pune Municipal Corporation by the Town Planning Development Department. Obviously, the statement in the said letter to the effect that the Pune Municipal Corporation was in receipt of the copy of the said notice dated 16-10-1996 refers to the copy having been made available for the Corporation by the said Town Planning Development Department and not about any service of such copy by the petitioner. There is neither specific averment to that effect in the said letter nor any other material being placed before the Court which can disclose such service of notice by the petitioners upon the Pune Municipal

Corporation. Plain reading of Section 127 of the said Act discloses that such notice is required to be served on the Planning Authority, Development Authority or an Appropriate Authority. The term "Appropriate Authority" has been defined under Section 2(3) to mean any public authority on whose behalf land is designated for a public purpose in any plan or scheme and which it is authorised to acquire. The term "Development Authority" means a New Town Development Authority constituted or declared under Section 113 in terms of the definition thereof under Section 2(8). The term "Planning Authority" has been defined under Section 2(19) to mean a local authority. The term "local authority" has been defined under Section 2(15) to mean any Municipal Corporation under the Bombay Municipal Corporation Act. Undoubtedly, the area in question lies within the jurisdiction of the Pune Municipal Corporation and the said Corporation has been formed under the Bombay Municipal Corporation Act. Bearing in mind the definitions of the said terms used in Section 127 of the said Act, it is but necessary that the notice under the said Section is required to be served upon the Planning Authority in respect of the area which lies within its jurisdiction.

5. As regards the decision of the Division Bench in **Madhav Raghunath Thatte's** case (supra), it was held

therein that the purpose of service of purchase notice is to give requisite knowledge to the appropriate authority that on its failure to take steps to acquire the land under Section 127 of the Act within six months from the service of notice, the reservation would lapse. However, in the said case, the notice was addressed to the Arbitrator and not the Planning Authority. Nevertheless, a copy of such notice was duly served upon the Planning Authority. In the said case, the Planning Authority was Shrirampur Municipal Corporation. In other words, though the notice was addressed to the Arbitrator, the petitioners therein had taken care to serve a copy of such notice upon the Planning Authority. In the case in hand, apart from mere statement in the memo of the writ petition that the notice was sent to the Planning Authority, there is nothing on record to disclose the service of copy of such notice upon the Planning Authority. The letter dated 12-1-2000 also nowhere states receipt of the notice dated 11-9-1996. On the contrary, it refers to copy of the letter dated 16-10-1996. In other words, this fact is also revealed in the letter of 12-1-2000. Obviously neither the copy of the notice dated 11-9-1996 was served upon the Pune Municipal Corporation nor even a copy thereof was received from the Planning Development Department within reasonable time from the issuance of such notice to the Town Planning Authority by the petitioners. In these

circumstances, the said decision is of no help to the petitioners and, on the contrary, the facts revealed from the records nowhere make out any case for issuance of the direction which is asked for, or for interference by this Court in writ jurisdiction and hence the petition is liable to be dismissed and is accordingly dismissed.

(Naresh H. Patil, J.) (R.M.S.Khandeparkar, J.)

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